

Docket No.: PF-0333-2 DIV

**REMARKS**

Claims 41-66 are pending in this application. Currently claims 41, 42, 45 and 46 are under consideration by the Examiner for prosecution purposes of this application.

**Allowable Subject Matter**

Applicants acknowledge that the Examiner has stated at page 3 of this Office Action that claims 42 and 46 contain allowable subject matter.

**Rejoinder of Claims**

Applicants continue to request the rejoinder of claims 43, 44 and 47-50 directed to methods of producing the claimed polypeptides and of using the claimed polypeptides upon allowance of a product claim per the Commissioner's Notice in the Official Gazette of March 26, 1996, entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103 (b)" which sets forth the rules that upon allowance of any of the product claims, the process claims covering the same scope as the allowed product claim(s) are to be rejoined.

**Rejection under 35 U.S.C. §112, first paragraph (enablement)**

Claims 41 and 45 stand rejected under the first paragraph of 35 U.S.C. §112 because allegedly the Specification does not reasonably provide enablement for the recited immunogenic fragments of SEQ ID NO:1 for the reasons asserted at pages 2 and 3 of this Final Office Action.

In the Advisory Action mailed April 21, 2003, the Examiner asserts that in our Reply to the Final Office Action, applicants only addressed the "how to make" part of the rejection, and not the "how to use" part of the rejection, i.e "What are the antibodies used for?"

However, Applicants did address the "how to use" part of the rejection and provided how the antibodies can be used in the bridging paragraph between pages 8 and 9. For the Examiner's convenience we repeat the same here:

Docket No.: PF-0333-2 DIV

The antibody so produced can be used in protein expression monitoring systems of a polypeptide of claim 41 a) and/or b) and/or a biologically active fragment of claim 41 c), e.g., Western Blots (*see, for example, the Nakamura, T. et al. reference, pp. 22481 and 22482, "Recombinant Expression of DANCE Protein"*). The antibody so produced can also be used to purify the polypeptide as recited in claim 41 (*see, for example, Example XII, "Purification of Naturally Occurring ECMP Using Specific Antibodies"*) (Emphasis added).

Accordingly, the antibodies can be used in protein expression monitoring systems of a polypeptide of claim 41 a) and/or b) and/or a biologically active fragment of claim 41 c) and/or to purify the polypeptide as recited in claim 41. Thus, applicants submit that Specification is enabling for the claimed immunogenic fragments. Therefore, reconsideration and withdrawal of this rejection to the claims are respectfully requested.

Docket No.: PF-0333-2 DIV

**CONCLUSION**

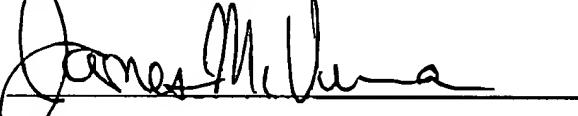
In light of the above remarks, Applicants submit that the present application is fully in condition for allowance, and request that the Examiner withdraw the outstanding rejection. Early notice to that effect is earnestly solicited.

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact Applicants' Attorney/Agent below.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 09-0108, as set forth in the enclosed fee transmittal letter.

Date: 23 May 2003

Respectfully submitted,  
INCYTE CORPORATION



James M. Verna, Ph.D.  
Reg. No. 33,287  
Direct Dial Telephone: (650) 845 -5415

Customer No.: 27904  
3160 Porter Drive  
Palo Alto, California 94304  
Phone: (650) 855-0555  
Fax: (650) 849-8886